

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TED MARCUM,

Petitioner

v.

C-1-02-425

ADULT PAROLE AUTHORITY,

Respondent

ORDER

This matter is before the Court upon the petitioner's Motion for Reconsideration of the Entries Filed on 3-5-2004 and 3-11-2004 and objections to referral of matters to the United States Magistrate Judge.

Petitioner requests that his Motions for Evidentiary Hearing and Appointment of Counsel (doc. no. 23), for Writ of Habeas Corpus *Ad Testificandum* (doc. no. 24) and request to advise the United States Attorney General of his right to apply for intervention (doc. no. 25) be reviewed *de novo*. Petitioner additionally objects to the submission of any issues to a Magistrate Judge.

Taking the issues in reverse order, this Court **DENIES** petitioner's objection to the referral of any matter to the jurisdiction of the Magistrate Judge. It has been clearly established that 28 U.S.C. § 636(b)(1)(A) provides the Magistrate Judge with the authority to hear and make recommendations on certain pretrial matters with

review by the District Judge under the “clearly erroneous” standard and 28 U.S.C. § 636(b)(1)(B) provides the Magistrate Judge with the authority to conduct hearings, including evidentiary hearings, and to submit to the District Judge proposed findings of fact and recommendations for the disposition by the District Judge of applications for post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement. The District Judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. *Flournoy v. Marshall*, 842 F.2d 875, 877 (6th Cir. 1988).

In part I of his memorandum in opposition to Respondent’s Return of Writ (doc. no. 20) and in his request to advise the United States Attorney General of his right to apply for intervention (doc. no. 25) petitioner argues that the Anti-Terrorism and Effective Death Penalty Act of 1996 (A.E.D.P.A.) is unconstitutional. Upon *de novo* review, this Court finds that the Supreme Court of the United States has instructed us that A.E.D.P.A. is constitutional. In fact, in *Felker v. Turpin*, 518 U.S. 651, 667 (1996), Justices Souter, Stevens and Breyer instruct that they have no difficulty with the conclusion that the A.E.D.P.A. is not on its face, or as applied here, unconstitutional. This Court agrees. The request to advise the United States Attorney General (doc. no. 25) is **DENIED**.

Petitioner's requests for an evidentiary hearing and appointment of counsel (doc. no. 23) and for Writ of Habeas Corpus *Ad Testificandum* (doc. no. 24) are intertwined inextricably with the merits of his Petition for Writ of Habeas Corpus. If an evidentiary hearing is required, the appointment of an attorney and petitioner's personal participation may be required. Neither the appointment of an attorney nor petitioner's personal presence is required at this time. The denial of the Motions by the United States Magistrate Judge is **AFFIRMED**. The petitioner may reinstate the requests for an appointment of counsel and Writ of Habeas Corpus *Ad Testificandum* at a later time if it becomes necessary to hold an evidentiary hearing.

Pursuant to the foregoing, petitioner's Motion (doc. no. 33) is **TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court